

Draft Minutes  
Land Trusts Protection & Advocacy Committee  
Tuesday, September 8, 2020 | 9 a.m.

Land Trusts Protection & Advocacy Office, Suite 340  
Electronic Meeting held through Zoom  
Video Conference:  
<https://us02web.zoom.us/j/5893447457>

Members of the Committee Present:

Paula Plant (USB E)  
Richard Ellis – virtually (my529)  
Louie Cononelos – virtually (Louie Cononelos & Associates Consulting LLC)  
Steve Ostler – virtually (Community Volunteer)  
Brigham Tomco – virtually (Zylun Global)

Others Present:

David Damschen – virtually (Utah State Treasurer)  
Marissa Sittler – virtually (Utah Office of State Treasurer)  
Justin Atwater (Land Trusts Protection & Advocacy Office)  
Jessie Stuart – (Land Trusts Protection & Advocacy Office)  
Tom Bachtell (Wind River Companies)  
David Ure (School and Institutional Trust Lands Administration)  
Scott Ruppe (School and Institutional Trust Lands Administration)  
Chris Ogren – virtually (School and Institutional Trust Funds Office)  
Jonathon Bates – virtually (University of Utah)  
Lisa Jones – virtually (School and Institutional Trust Lands Administration)  
Mike Johnson - virtually (School and Institutional Trust Lands Administration)  
Margaret Bird (Higher Education Beneficiaries)

Meeting called to order by Mr. Atwater at approximately 9 a.m.

1. Welcome

As Mel Brown's term ended, there was no committee chair to lead the meeting. Mr. Atwater opened the meeting and asked if Ms. Plant would lead, until a committee chair was nominated.

2. Approval of Prior Meeting Minutes

Ms. Plant asked for a motion to approve the minutes from July 14, 2020. Mr. Cononelos made the motion and Mr. Ostler seconded the motion. Mr. Ellis stated that he would abstain from the record, as he did not attend the July 14 meeting.

## Record of Vote:

Mr. Tomco: Aye  
Ms. Plant: Aye  
Mr. Ostler: Aye  
Mr. Cononelos: Aye

Abstained:  
Mr. Ellis

### 3. Director's Report

#### a) Recognition of Mel Brown and Tom Bachtell

Mr. Atwater recognized Mel Brown, the former chair of the Advocacy Committee, and Tom Bachtell, former committee member. Both of their terms expired August 31, 2020. Mr. Atwater expressed his gratitude for the excellent service demonstrated from Mel Brown and Tom Bachtell.

Mr. Bachtell announced that SITLA supported a deal on the railway in the Uinta Basin with Drexel Hamilton as the financier and Rio Grande as the railroad. It is anticipated to be operational by 2024. He believes that this will be significant to the trust. Mr. Bachtell thanked everyone for the opportunity to serve and stated that he looks forward to any contributions he can give in the future.

Mr. Cononelos commended Mr. Brown, Mr. Bachtell, and Ms. Bird for their contributions. Ms. Bird stated that she believes the trust system has been fortunate to have excellent members of service.

#### b) Welcome New Advocacy Committee Members

Mr. Atwater welcomed Mr. Cononelos and Mr. Ellis to the committee. He acknowledged each of their expertise and stated that he looks forward to their contributions.

#### c) Other Items of Business

##### i. SITLA Update

Mr. Atwater provided an updated on SITLA board leadership composition and board subcommittee assignments. Bryan Harris was recently confirmed by the full Senate and is a new member on the SITLA board. Mr. Harris replaced Lonnie Bullard. Roger Barrus is the new chair of the SITLA board. Mr. Atwater also noted that SITLA will be proposing their FY2022 appropriations and budget in their upcoming board meeting.

##### ii. SITFO Update

Mr. Atwater provided an update on recent SITFO activity, including the agency conducting interviews to hire an investment analyst, an upcoming move to 310 South Main Street and the possibility of SITFO board meetings being conducted four times annually, rather than six annually.

Mr. Atwater also showed a graph depicting the total fund asset growth and provided summary. He commended the defensive strategies of the fund and thanked SITFO and its board for their hard work and efforts in having a diversified portfolio, especially during these unprecedented times.

Additionally, an update was provided on legislation SITFO would be proposing in the 2021 session for an OPMA exception. They will be asking for an exemption from the OPMA, which would allow them to close an open session to discuss the sale or purchase of identifiable securities, investment funds, or investment contracts that are subject to confidentiality provisions. It was noted that this is parallel to the amendment that SITLA passed in the previous legislative session allowing for them to enter into strategy sessions to discuss the propriety of a specific investment.

Mr. Atwater stated that the Advocacy Office is in support of these changes and noted that these are meetings that the Advocacy Office would participate in. Mr. Cononelos asked if the Advocacy Office director is allowed to attend the closed meetings by statute or by invitation, and Mr. Atwater stated that it is by statute.

Additionally, SITFO has requested that the Advocacy Office and Committee statute be amended to include a provision that exempts the Advocacy Office exempt from GRAMA with respect to the investment documents it receives from SITFO that are subject to confidentiality. Mr. Atwater stated that it would not be fair or prudent for SITFO to share these documents with the Advocacy Office, if it did not have the same GRAMA exemption as SITFO. He stated that they intend on advancing that legislation together. This would resolve the issue of the reluctance to have the Advocacy Office director in meetings where they would be sharing items subject to confidentiality.

### iii. Protection & Advocacy Office Update

Mr. Atwater announced that the Advocacy Office is close to having the first version of the trust system video ready. A subcommittee made up of SITFO, SITLA, the Utah Office of State Treasurer, and the Advocacy Office has been working on the video. Ms. Plant noted that the intent of the video is to be brief and to talk about the differences of the agencies, while showing how they are all interconnected.

Mr. Atwater walked through the document that the Advocacy Office created for outreach use with policy makers that provides an overview of the Utah School and Institutional Trust System, and commented on its usefulness thus far. He commended Ms. Stuart for her efforts in creating the document. Mr. Tomco noted that it is helpful to have an outline of the trust system. Ms. Plant thanked Ms. Stuart for her work in ensuring that everyone was comfortable with the document. Mr. Atwater noted that he and Ms. Stuart met with Senators Millner and Stevenson and had the opportunity to talk with them about why the Advocacy Office was created, the mission of the office, and the office's relation to SITLA, SITFO, and the beneficiaries. Mr. Atwater commented that both senators are very supportive of the agencies. Senators Millner and Stevenson expressed how grateful they are to SITLA, SITFO, and the Advocacy Office for being good stewards of the trust. Mr. Atwater noted that there is generally still some confusion of trust lands versus public lands.

#### iv. Protection & Advocacy Office Update on Proposed Legislative Changes

Mr. Atwater updated the Committee that the Advocacy Office has been working on some potential changes to statute regarding the trust system. A committee made up of Mr. Brown (prior to his term expiring), Mr. Atwater, Ms. Stuart, Ms. Bird, and Ms. Plant met a couple times to discuss those items. Mr. Atwater noted that he has also shared the outline of the items with Peter Madsen, SITFO Director, and David Ure, SITLA Director. These items have also been discussed at length with Treasurer Damschen.

Mr. Atwater noted the importance of establishing a good understanding of the proposed items and reaching an agreement if the proposed changes are something the Committee wants to pursue. Mr. Atwater welcomed feedback from the group. The group discussed each item separately as outlined.

- a) Item one focuses on renumbering of statutes to new Trust Title within the Utah Code (e.g. Title 80). Rather than having the trust responsibilities and statutes fragmented through various titles (which has contributed to some of the confusion as to what the trust is and who it benefits), it is important for the trust to be viewed as a whole and be recognized as a system for multiple beneficiaries.
- b) Item two relates to general trust system provisions applicable to the Trust as a whole (i.e. enumeration of a purpose statement, undivided loyalty, general duties to beneficiaries, oaths of office, and rights of beneficiaries). The idea is to create structure for the system as a whole. Mr. Ellis commented that it is worth trying to get the focus of item one and two accomplished. Sponsors for the bill were discussed.
- c) Item three involves changes to the SITLA Nominating Committee and beneficiary representation. The topic being while industry experts are important to aid the proposing names of the potential board members, it should be the beneficiaries that ultimately decide the nominees who advance to the governor. Additionally, industry experts also need to be current producers in the area of experience.

Mr. Atwater noted the three proposed options a) Increase the SITLA Nominating Committee to 13 members (the two members would be appointed by the Advocacy Office and/or beneficiary groups; b) Replace the governor's real estate professional at large appointment to the Committee with the Advocacy Office director; c) Increase the size of the Advocacy Committee to seven members.

Mr. Tomco stated that he does not believe having a larger SITLA Nominating Committee would be helpful. He noted that the members of that committee who are not from the Advocacy Committee are typically in positions where they are hired to lobby or advocate on behalf of a special interest and there can tend to be industry bias. He believes that it would be better to have a majority of those who have beneficiary fiduciary responsibility on the SITLA Nominating Committee. Mr. Cononelos agreed that he would not expand the committee's size. Ms. Plant

also commented that the SITLA Nominating Committee does not need to be larger. She believes that any legislation run this year also needs to be as non-controversial as possible.

Ms. Bird commented that the objective would be to add two members to the Advocacy Committee, which would therefore make it a beneficiary representative majority on the SITLA Nominating Committee. Mr. Ruppe commented he does not believe the SITLA Nominating Committee needs to be changed, as it has been functioning properly. He also noted he has not vetted the idea with Director Ure or gathered the thoughts of the SITLA board on the matter.

Mr. Atwater opened up the discussion on whether or not the credentials and requirements for the industry experts of the SITLA Nominating Committee ought to adjust that those members must be current producers in their area of experience. Mr. Ellis and Mr. Cononelos commented that it might be not be the best time to run legislation on the item in the upcoming session, given that it may be virtual and in that setting difficult to address controversial matters which could inhibit the other proposed legislation. Ms. Bird commented on the importance of having greater beneficiary influence on the SITLA Nominating Committee and believed the legislation would move forward if all in agreement of the proposed action.

Mr. Atwater summed up the Advocacy Committee discussion on the item that the general direction is the Nominating Committee composition not be changed for now. However, potentially having some language requiring members of the Nominating Committee that represent their particular area of expertise be producers and not lobbyists would be worth considering, as long as it would not impair the chances of having the other potential pieces of legislation pass. Mr. Atwater also commented that it may be worth potentially meeting with producers and industry experts to receive their feedback as necessary.

- d) Item four relates to the composition of the Protection & Advocacy Committee, with the concern being composition of the Advocacy Committee is made up of appointed individuals from the same agencies which the Committee provides checks and balances for. By statute, the composition of the Committee includes two members appointed by SITLA, one member appointed by SITFO, one member being a de facto member, which is the administrator of the School LAND Trust Program, and one member appointed by the State Treasurer. Mr. Atwater explained that a potential solution to the concern would be that the Advocacy Committee appoint its own membership.

Mr. Ellis commented his concern for facing political pressure with the Committee appointing its own members and Mr. Ostler commented that there is significant value in the committee members having prior experience, i.e. having served on the SITLA board, which would be difficult for someone who is unfamiliar with the system to be as effective. Mr. Ruppe agreed that it is difficult for someone to have the experience needed to represent SITLA without having prior experience with the agency. Mr. Atwater noted the SITLA board has passed a policy regarding its appointments to the Advocacy Committee which involves a robust process.

Ms. Plant also stated that she has spoken with the Utah State Board of Education (USBE) and made it clear that her representation on the Advocacy Committee is different than her employment with USBE and that she represents all beneficiaries in her capacity on the

committee. Ms. Plant added that, to date, USBE has never asked her to represent a particular position.

Ms. Bird commented that there needs to be beneficiary input on this issue. Mr. Atwater stated that there will need to be further discussion with the SITLA board, the SITFO board, and Treasurer Damschen for their feedback.

- e) Item five relates to the Advocacy Office providing staff support to the Advocacy Committee consistent with the practice of SITFO and SITLA. Currently by statute, the Advocacy Committee is supported by the Utah Office of State Treasurer. As background, the Committee was composed before there was an Advocacy Office, and there needed to be an entity with administrative duty to support the Committee. Now that there is an established Office, the proposed change would be for the Advocacy Office to provide staff support to the Advocacy Committee. Treasurer Damschen stated that the Office of State Treasurer is happy to continue providing support, but agreed that now that the Advocacy Office is up and running, it may be more practical for the staff support to come from the Advocacy Office itself. Mr. Atwater and Ms. Bird expressed their gratitude for Treasurer Damschen and the Office of State Treasurer for their work and efforts.

#### 4. Committee Items

##### a) Elect Committee Chair and Vice Chair

Ms. Plant opened the invitation for nominations of committee chair and vice chair. Mr. Tomco nominated Mr. Ostler as committee chair. Mr. Cononelos seconded the nomination.

Ms. Plant made the motion for Mr. Ostler to be the Advocacy Committee chair for the coming year.

The motion passed unanimously with all members voting in favor.

Record of Vote:

Mr. Tomco: Aye

Ms. Plant: Aye

Mr. Ostler: Aye

Mr. Cononelos: Aye

Mr. Ellis: Aye

Mr. Tomco nominated Ms. Plant as the Advocacy Committee vice chair. Mr. Ostler seconded the nomination. The motion passed unanimously with all members voting in favor.

Record of Vote:

Mr. Tomco: Aye

Ms. Plant: Aye  
Mr. Ostler: Aye  
Mr. Cononelos: Aye  
Mr. Ellis: Aye

b) GRAMA, OPMA, Employees' Ethics Act Training

This agenda item was not addressed during the meeting, as the assistant attorney general was unable to be in attendance.

c) Educational Assistance Policy

At the last Advocacy Committee meeting, it was discussed to establish an education reimbursement policy for employees of the Advocacy Office. The committee made the decision to set aside funds from the budget to allocate towards the Educational Assistance Policy. The Advocacy Office utilized the policy that the Utah Office of State Treasurer has as a foundation for the Advocacy Office's own policy. Mr. Ellis inquired about the individual cap of maximum reimbursement per calendar year and about the disclosure of scholarships, grants, or subsidies, and suggested that both should be within the policy. Discussion was had regarding those items. It was suggested to add the cap as outlined in DHRM Rule Section R477-10-5 to the policy.

Mr. Cononelos referenced number two in the Educational Assistance Policy and asked what type of education would be approved and by whom that would be approved by. Mr. Atwater stated that the Advocacy Committee would determine and approve if the education would be additive to the Advocacy Office. Language will be added to the document to add clarity that the Advocacy Committee would be the determining body if education assistance would be granted.

Mr. Cononelos also commented on the passing C grade requirement and noted that a C grade is very uncommon, now. It was recommended to change it to a B for the passing grade. Mr. Ellis made the motion to approve the policy with the amendments discussed. Mr. Cononelos seconded the motion. The motion passed unanimously with all members voting in favor.

Record of Vote:

Mr. Tomco: Aye  
Ms. Plant: Aye  
Mr. Ostler: Aye  
Mr. Cononelos: Aye  
Mr. Ellis: Aye

d) Proposed Budget Increase Request

The committee decided to go into closed session, as there were items relating to the FY2022 proposed budget increase request that needed to be discussed in closed session to appropriately address the topic. After the closed session, the committee resumed to open session to discuss the FY2022 proposed budget increase request.

## 5. Closed Session

A closed session was entered into to discuss two separate items.

- a) Pursuant to Utah Code §52-4-205.1(c), strategy session to discuss pending or reasonably imminent litigation
- b) Pursuant to Utah Code §52-4-205.1(a), discussion of the character professional competence, or physical or mental health of an individual.

Mr. Cononelos made the motion to go into closed session and Mr. Ostler seconded the motion. The motion passed unanimously with all members voting in favor.

Record of Vote:

Mr. Tomco: Aye  
Ms. Plant: Aye  
Mr. Ostler: Aye  
Mr. Cononelos: Aye  
Mr. Ellis: Aye

After the closed meetings, the open meeting was resumed. Mr. Atwater stated that the request for the FY2022 Advocacy Office budget is to leave the budget static, with one exception. The Office is requesting an additional \$75,000 to hire an additional full-time employee, which would equate to \$45,000 - \$50,000 base compensation, plus funding for the state paid benefits.

The request is for someone to aid in administrative and receptionist support for the Advocacy Office for FY2022 and going forward. Mr. Ostler made the motion to approve the amended budget with the additional full-time employee. Mr. Cononelos seconded the motion. The motion passed unanimously with all members voting in favor.

Record of Vote:

Mr. Tomco: Aye  
Ms. Plant: Aye  
Mr. Ostler: Aye  
Mr. Cononelos: Aye  
Mr. Ellis: Aye

Following the motion, Ms. Bird inquired what the new full-time employee would add to the office that would provide value, as the requested \$75,000 would not be going toward schools. Mr. Atwater stated that when the Advocacy Office met in July, he was requested to determine if the office required an additional staff member, and if so, at what level the employee should be hired. In the best interest of the trust, it was decided that the employee would be hired at an administrative level to handle administrative tasks, such as preparing packets, scheduling meetings, among other items. Currently, Ms. Stuart is unable to do legislative outreach, beneficiary outreach, and public outreach, as she handles the administrative work for the office. Mr. Atwater stated that DHRM



provided them with the salary range for someone with those administrative duties and it is a base salary of about \$45,000 (plus the cost of state paid benefits). Mr. Atwater expressed that the Office could work with Ms. Bird on providing additional information as requested and noted that he welcomes feedback.

6. Discussion of Future Meeting Dates

The next Advocacy Committee meeting is scheduled for November 17, 2020.

7. Adjourn

Mr. Ostler made the motion to adjourn the meeting and thanked Ms. Plant for conducting the meeting. The motion passed unanimously with all members voting in favor.

Record of Vote:

Mr. Tomco: Aye

Ms. Plant: Aye

Mr. Ostler: Aye

Mr. Cononelos: Aye

Mr Ellis: Aye

Meeting was adjourned.